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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

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Federal Communications Commission  
Office of the Secretary

IN THE MATTER OF: )

MISSOURI RESEARCH AND )  
EDUCATION NETWORK )

CC Docket No. 02-6

Request for Review

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The Missouri Research and Education Network (MOREnet) respectfully requests the Federal Communications Commission review and overturn the funding denial decisions of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC). MOREnet<sup>1</sup> specifically appeals the July 27, 2005 funding denial of Year 2005 Form 471 Applications 446262, 468364, and 449390 in the combined amount of \$7,067,888.85. *See Exhibit 1, Funding Commitment Decision Letters for Form 471 Applications 446262, 468364, and 449390.*

In each funding commitment decision letter, the identical reason for denial states: "[C]onsortium leader has failed to provide evidence of authority to file Forms 471 on behalf of, or evidence of the membership of, a substantial number of the members included in this consortium." This finding by SLD is clearly erroneous and should be reversed. MOREnet obtained fully executed Letters of Agency from each consortium member prior to the timely submission of MOREnet's Forms 471. The Letters of Agency provide clear and concise evidence of consortium membership and the authority conferred by consortium members to MOREnet to file appropriate FCC forms in seeking E-rate discounts.

<sup>1</sup> MOREnet's Billed Entity Number (BEN) is 152265.

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The SLD's funding denial decision is without merit and without justification.

MOREnet respectfully requests the Commission to overturn the funding denials and return the applications to SLD for full review and consideration on their merits.


### **Background**

The Missouri Research and Education Network is the state education network for Missouri. MOREnet is an entity of the University of Missouri and is funded solely by the State of Missouri and customer participation fees. MOREnet customers include 747 E-rate eligible organizations, or just over 98% of Missouri's schools and public libraries. These organizations rely solely on MOREnet for the provision of Internet access.

Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts on eligible telecommunications services, Internet access, internal connections, and basic maintenance of internal connections<sup>2</sup>. Under this regulatory authority, MOREnet applies for E-rate discounts annually as a consortium on behalf of member schools and libraries. In addition to obtaining Letters of Agency from each consortium member, MOREnet maintains contractual agreements with the Missouri State Library and the Missouri Department of Elementary and Secondary Education relating to the Universal Service Fund. In MOREnet's fully executed contract with the Missouri State Library, MOREnet agrees to "[S]ubmit applications to obtain Universal Service discounts on eligible services in which MOREnet is the Billed Entity provided to Missouri public libraries as part of the REAL program." *See Exhibit 2, Remote Electronic Access for Libraries Program Agreement, Missouri State Library, Attachment A.* In MOREnet's Policy Analyst contract with the Missouri Department of Elementary and Secondary

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<sup>2</sup> 47 C.F.R. §§ 54.502, 54.503



Education, MOREnet agrees to “[M]anage the application process to obtain Universal Service discounts on eligible services provided to participants of MOREnet’s K-12 Technology Network Program.” *See Exhibit 3, FY05 DESE Policy Analyst Contract.*

Prior to the closing of the 2005 Form 471 filing window, MOREnet timely filed three FCC Form 471 applications seeking Funding Year 2005 support on behalf of 747 Missouri school districts and libraries. On March 7, 2005, Douglas May from the Program Integrity Assurance (PIA) department requested documentation demonstrating that MOREnet had obtained Letters of Agency from each participating consortium member granting authority for MOREnet to submit an E-rate application on their behalf. MOREnet complied with this request in a timely manner and on March 14, 2005, sent all 747 fully executed Letters of Agency to the SLD for review.

MOREnet received no further communications from SLD regarding Letters of Agency after MOREnet submitted all requested documentation until funding denials were issued on July 27, 2005. The single basis of the Forms 471 denials is: “[C]onsortium leader has failed to provide evidence of authority to file Forms 471 on behalf of, or evidence of the membership of, a substantial number of the members included in this consortium.”

#### **Letters of Agency**

There is no dispute in this appeal about whether MOREnet produced a Letter of Agency for each entity on whose behalf it filed the Form 471 application. MOREnet produced each and every Letter of Agency for each of the entities included in the consortium Form 471 applications.

The sole dispute is whether the Letters of Agency provide sufficient authorization to MOREnet to file the Form 471 applications. In *Project Interconnect*<sup>3</sup>, the Commission expressly found the Commission's regulations allow schools and libraries to form consortia for purposes of seeking competitive bids on their service requests<sup>4</sup>. However, since discounts are restricted by statute to "bona fide request[s]" for services, a consortium application may only be submitted on behalf of schools and libraries *which have actually authorized* the consortium to make the request<sup>5</sup>.

The Commission affirmed in *United Talmudical Academy*<sup>6</sup> that SLD may engage in a detailed review of an applicant's FCC Form 471 Item 22 certification, in which the applicant certifies that the schools and libraries represented by the applicant have secured access to all of the resources necessary to make effective use of the services. The Commission concluded that a detailed review of that certification helped to ensure compliance with the Commission's rules and also helped to avoid waste, fraud and abuse in the schools and libraries universal service support mechanism.<sup>7</sup> Relying on this logic, the *Project Interconnect* decision found that a review of the Item 29 certification of Form 471 serves an identical purpose. Clearly, SLD must ensure that the consortium members are aware of the application to be filed. MOREnet understands the purpose of the Letter of Agency requirement.

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<sup>3</sup> *Request for Review by Project Interconnect, Brooklyn Park, Minnesota, Federal-State Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Files No. SLD-146858, 146854 (*Project Interconnect*).

<sup>4</sup> 47 C.F.R. § 54.501(d)(1).

<sup>5</sup> 47 U.S.C. § 254(h)(1)(B) (emphasis added).

<sup>6</sup> *Request for Review by United Talmudical Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Files No. SLD-105791, 15 FCC Red 423, paras. 9, 14 (2000) (*United Talmudical Academy*).

<sup>7</sup> *Id.* at para. 14.

## **MOREnet's Letter of Agency**

In December 2004, MOREnet sent *Letters of Agency* to each of the 747 Missouri schools and libraries who are MOREnet customers. See *Exhibit 4, MOREnet Letters of Agency*. MOREnet asked for the fully executed Letters to be returned to MOREnet no later than January 20, 2005, thereby ensuring that each customer completed the Letter of Agency correctly prior to the filing of MOREnet's Forms 471.

## **The Funding Denial**

On July 27, 2005, SLD issued funding commitment letters denying MOREnet's entire \$7,067,888.85 application on the basis that the consortium failed to provide evidence of authority to apply for E-rate discounts on behalf of schools and libraries.

FCC regulations detail requirements for the Universal Service Support for Schools and Libraries beginning in 47 C.F.R. § 54.500. Beyond granting consortia the ability to apply for E-rate funds, the codified regulations require no specific elements to be included in a Letter of Agency. Prior FCC opinions mandate no specific information components that must be required in a Letter of Agency other than ensuring that a consortium member has authorized the consortium leader to apply for E-rate discounts on behalf of the members<sup>8</sup>. Additionally, in cases regarding the Letter of Agency, the FCC looks for evidence of bad faith by the consortium leader in seeking E-rate discounts on behalf of consortium members<sup>9</sup>. In *Project Interconnect*, the Commission found no evidence of bad faith by Project Interconnect when they provided the majority, but not all, Letters of Agency from consortium members. Because the consortium leader was found to be acting in good faith (and there was no evidence of fraud or any other

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<sup>8</sup> *Project Interconnect* at 5.

<sup>9</sup> *Id.* at 6-7.

wrongdoing), the Commission directed the SLD to reduce and not altogether deny discounts for those consortium members without a Letter of Agency.

Clearly, MOREnet's Letter of Agency confirms that each consortium member has authorized MOREnet to apply for discounts on E-rate eligible services on behalf of the member organizations. MOREnet's Letter of Agency specifically confers authority upon MOREnet to file FCC Forms 470, 471, 474 and other E-rate forms on behalf of member organizations. Therefore, MOREnet's Letter of Agency meets the current Commission regulations regarding consortium applications.

Apparently, the SLD's guidance on Letters of Agency is far more specific than the FCC regulations or orders, and directs that specific information components be included in Letters of Agency, in order for the SLD to accept Letters of Agency as valid.<sup>10</sup> By rejecting the MOREnet applications on the basis of SLD-prescribed guidance<sup>11</sup> that went far beyond the four corners of FCC Orders and regulations, the SLD clearly engaged in policymaking and went beyond its charter of administering FCC rules. USAC creation of E-rate policy is one of the pitfalls of the National E-rate Program and was specifically singled out as problematic by the February 2005 United States Government Accountability Office (GAO) report to Congress entitled "Greater Involvement Needed by FCC in the Management and Oversight of the E-rate Program." There, the GAO took issue with USAC's unilateral policy decisions that were treated as codified law when issuing funding denials and approvals. That is exactly what is

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<sup>10</sup> See, e.g., <http://www.sl.universalservice.org/reference/letters.asp>.

<sup>11</sup> The SLD's website ([www.sl.universalservice.org/reference/letters.asp](http://www.sl.universalservice.org/reference/letters.asp)) says that Letters of Agency should contain: the name of the consortium or consortium leader; the name of the consortium member; the specific timeframe the Letter of Agency or authorizing document authorizes; the signature, signature date, and title of an official who is an employee of the entity who is authorizing the filing of the application; and the type of services covered by the LOA or authorizing document

*happening here. Under the guise of administering the program, the SLD has gone far beyond the policies announced by the FCC and has prescribed far more specific requirements.*

MOREnet's Letter of Agency is wholly sufficient to confer authority by consortium members upon MOREnet to file E-rate forms on behalf of members. Absolutely no basis exists for denying MOREnet's E-rate applications when considering the elements of the fully executed Letter of Agency.

### **Conclusion**

The SLD erred in denying MOREnet's Form 471 applications. MOREnet has fully executed Letters of Agency from each member organization. The Letters confer the appropriate authority for MOREnet to seek discounts on E-rate eligible services on behalf of member organizations. To deny MOREnet's applications would be to do so without legal reason. In a broader policy view, such a decision discourages consortium applicants from participating in the E-rate program. This contravenes the Commission's well-known desire to "encourage schools and libraries to aggregate their demand with others to create a consortium with sufficient demand to attract competitors and thereby negotiate lower rates..."<sup>12</sup>

SLD's funding denial decisions should be reversed and the applications remanded to SLD for full consideration of funding.

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<sup>12</sup> *Universal Service Order*, 12 FCC Red 8776, 9027, as cited by *Project Interconnect* at 7.

Respectfully Submitted,

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